



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

September 21, 1990

Mr. Bryan M. Perot
Executive Officer
Polygraph Examiners Board
P.O. Box 4087
Austin, Texas 78773-0001

OR90-453

Dear Mr. Perot:

You have received a request pursuant to the Open Records Act, article 6252-17a, V.T.C.S., for copies of all records and test results in the possession of the Texas Polygraph Examiners Board pertaining to a certain licensed polygraph examiner. Your request has been designated ID# 9404.

You state no records exist regarding the polygraph licensing examination, but that you do possess a copy of the examiner's college transcripts, which you sent for our inspection.

The Family Educational Rights and Privacy Act of 1974 (FERPA), which is incorporated into the Open Records Act by Section 14(e) of the Open Records Act, provides that no federal funds will be made available to an educational agency or institution that releases education records of students without the written consent of the parent or a student who has attained the age of eighteen years. 20 U.S.C. § 1232g(d). "Education records" means those records which "(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A).

The requested transcripts are in the possession of the Texas Polygraph Examiners Board and not maintained by an educational agency or institution or by a person acting for such agency or institution; therefore, they do not constitute "education records" under FERPA.

Section 3(a)(14) of the Open Records Act protects "student records at educational institutions funded wholly,

or in part, by state revenue." The Texas Polygraph Examiner's Board is not an educational institution funded wholly or in part by state revenue; its records are therefore not entitled to the protection of section 3(a)(14). See Open Records Decision Nos. 215 (1978); 157 (1977).

Finally, because the privacy interests of the licensee may be implicated by the release of his transcripts, we will consider the application of section 3(a)(1) to this information. In that regard, this office has on several occasions found that the release of the college transcripts of licensees does not affect the privacy rights protected by section 3(a)(1). Attorney General Opinion H-242 (1974); Open Records Decision Nos. 467 (1987); 215 (1978). Further, college transcripts submitted by a licensee to a licensing board as part of the licensing process are not protected under section 3(a)(1) of the Open Records Act unless a statute expressly provides such protection. Open Records Decision No. 467. We have found no such statute; you may release the transcripts.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-453.

Yours very truly,

Kay H. Guajardo by SG

Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref: ID# 9404, 10568

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